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IN THE

Supreme Court of the United States

October Term, 1932

No. 282

HELEN C. JOHNSON, HERBERT F. JOHNSON, JR., HENRIETTA J. JOHNSON AND JOHN J. LOUIS, PARTNERS DOING BUSINESS UNDER THE FIRM NAME OF S. C. JOHNSON & SON,

Appellants,

vs.

ARTHUR STAR,

Appellee.

On Appeal From the Supreme Court of the State of Texas.

BRIEF FOR APPELLEE

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Appellants,

vs.

ARTHUR STAR,

Appellee.

On Appeal From the Supreme Court of the State of Texas.

BRIEF FOR APPELLEE

1.

THE OPINIONS OF THE COURTS BELOW

The opinion of the Supreme Court of Texas is printed in the record, at page 58, and reported in 47 S. W. (2nd)

608. The opinion of the Court of Civil Appeals, affirmed by the Supreme Court of Texas, is printed in the record at page 13, and reported in 44 S. W. (2nd) 429.

2.

STATEMENT OF THE CASE

This is an appeal from the Supreme Court of the State of Texas, affirming a judgment of one of the Courts of Civil Appeals, holding that the law of Texas regulating assignments for the benefit of creditors, known as Title 12 of the 1925 Revised Civil Statutes, was not suspended by the National Bankruptcy Act, that the assignment from Dallas Showcase and Manufacturing Company to appellee was valid to pass title to all its assets to appellee, and that such assets were thereby removed from the reach of garnishment by appellants on a claim against the assignor.

The findings of fact by the trial court, show, at page 10 of the Record, were not disturbed by the Court of Civil Appeals or the Supreme Court, and are binding as a statement of all the facts involved in the case.

These findings of fact show conclusively that the assignment in this case was for the benefit of all creditors, share and share alike, no acceptance by the creditors being required. They show that no discharge was sought

by the assignee or the assignor, and that no release of future liability was ever requested of appellants. They show that $582.63 in the assignee's hands is to be applied on $11,000.00 of indebtedness, or less than four per centum to each creditor. They show that the assignee acted thruout under the authority of the deed of assignment as made to him.

The trial courts held that Title 12 of the 1925 Revised Civil Statutes was suspended, that the assignment therefore could not pass title, and that accordingly funds held by the assignee were subject to garnishment by a creditor of the assignor. This entire holding was reversed by the Court of Civil Appeals and the Court of Civil Appeals was sustained by the Supreme Court of Texas.

The questions for review in this court are:

(1) Is a law regulating assignments for the benefit of creditors, construed by the Supreme Court of that state not to be an insolvency law, suspended by the National Bankruptcy Act?

(2) Is an assignment for the benefit of all creditors, which would be good at common law, and which contains no provision for release or discharge, absolutely void to pass title, in the absence of any proceedings under the National Bankruptcy Act?

The facts of this case do not in any way involve the

question of discharge or release either by provisions of the assignment or by statutory provisions; nor has such question ever been raised in the facts, being raised only by appellants' brief perhaps as a smoke-screen.

3.

ARGUMENT

(1) Title 12 of the 1925 Revised Civil Statutes of Texas, construed to be an assignment law by the Supreme Court of Texas, is not an insolvency law, and in no wise conflicts either with the Constitution of the United States or with the National Bankruptcy Act of 1898.

These are not new questions before this honorable Court. Ever since passage of the Bankruptcy Law of 1800, assignments for the benefit of creditors have been assailed as void. Never has this court held an assignment for the benefit of creditors absolutely void ab initio, although it is not disputed that assignments are voidable when attacked by bankruptcy proceedings seasonably begun, within four months under the present bankruptcy law. This Court has consistently and carefully differentiated between insolvency laws and assignment laws, and two long lines of decisions have grown

up under these two headings, lines which have been differentiated and followed by the lower federal courts and by the state courts thruout the nation.

Appellants' case is based on International Shoe Company vs. Pinkus, decided by this court in 1928, reported in 278 U. S. 261, 73 L. Ed. 318. The Pinkus case laid down no new principle of law, but merely enunciated the doctrines set forth by this Court on numerous occasions, and capped the climax of the line of decisions under the heading of insolvency laws. It is a clear statement of the rule of law *applying to its facts.* Its facts are that in Arkansas there are two statutes, one known as Chapter 93 of Crawford & Moses' Digest, entitled "Insolvent Debtors", set out in the Record, page 38; the other known as Chapter 9 of Crawford & Moses' Digest, entitled "Assignments for Creditors." Upon the first of these laws this court passed in the Pinkus case, holding it to have been suspended by the Bankruptcy Law, and this court opened its discussion with the statement:

> "The Arkansas Statute is an insolvent law. It is so designated in its title, Arkansas Acts of 1897, and in the revision. *The Supreme Court of the State treats it as such.* (Citing decisions of Arkansas Supreme Court so holding.)

The only question before this court for decision in that case was the Arkansas Insolvency Law. No question of

assignments for the benefit of creditors was involved in it. And this court handed down the same decision that it had rendered time and time again, ever since the days of Sturgis vs. Crowninshield, 4 Wheat 122, 4 L. Ed. 529, which held insolvency laws suspended insofar as they conflicted with the United States Bankruptcy Law.

The Arkansas Supreme Court has itself differentiated between Chapter 93, "Insolvent Debtors", and Chapter 9, "Assignments for Creditors" in the case of Finch vs. Watson Investment Company, 42 S. W. (2nd) 214. In that case that court held that the Pinkus case applied to actions under Chapter 93, which chapter was suspended, but that it did not apply to or affect in any way the validity of assignments for the benefit of creditors under Chapter 9, regulating the administrative procedure in cases where an assignment was voluntarily made by a debtor.

But appellants seek to make the Pinkus case controlling of a different set of facts, to which this court has often applied a different rule of law. If Appellants' contention is correct that an assignment for the benefit of creditors is void, and conveys no title, then this court has been wrong for fifty years. For fifty years this court has regularly, consistently, and steadily recognized the validity of an assignment for the benefit of creditors, and has never overthrown one *unless proceedings*

in bankruptcy were properly begun in due time. No bankruptcy proceedings have ever been initiated in the instant case.

In 1833 Mr. Chief Justice Marshall in Brashear vs. West, 7 Peters 608, 8 L. Ed. 801, said:

> "That a general assignment of all a man's property is, per se, fraudulent, has never been alleged in this country. The right to make it results from that absolute ownership which every man claims over that which is his own."

Without interruption, this court has recognized that doctrine, either expressly holding assignments valid, unless attacked in bankruptcy in due time, as in Mayer vs. Hellman, 91 U. S. 496, 23 L. Ed. 377, and Stellwagen vs. Clum, 245 U. S. 605, 62 L. Ed. 507, or impliedly so holding by recognizing the adverse claim of assignees to fees, as in Louisville Trust Company vs. Comingor, 184 U. S. 18, 46 L. Ed. 413, and in Galbraith vs. Vallely, 256 U. S. 46, 65 L. Ed. 823.

In Stellwagen vs. Clum, decided by this court in 1918, the decision of Mayer vs. Hellman was expressly held to be correct under the present bankruptcy law, and the court quoted with approval Mr. Justice Field's language holding that the statute of Ohio regulating assignments for the benefit of creditors was "not an insolvent law in any proper sense of the term." Mayer vs. Hellman has

been cited so often by this court that it would be surplusage to quote from it here.

The rule of Mayer vs. Hellman has been adopted, cited, and followed in literally dozens of cases. To cite only a few, for the purpose of showing the ubiquity of its adoption: In Re Farrell, (C. C. A., 6th Circuit, 1910) 176 Fed. 505; In Re Creech Bros. Lumber Co., (C. C. A., 9th Circuit, 1917) 240 Fed. 8; Patty-Joiner & Eubank Co. vs. Cummins, (Texas Sup. Ct., 1900) 59 S. W. 297; Duryea vs. Guthrie, (Wis. 1903), 117 Wis. 399, 94 N. W. 365; Re Tarnowski, (Wis.) 191 Wis. 279, 210 N. W. 836; Akers vs. Rowan, (So. Car.), 10 L. R. A. 705; Bertenshaw vs. Klag (Kans. 1924), 231 Pac. 73; and innumerable decissions of federal district courts.

Appellants stress the fact that in Mayer vs. Hellman more than four months had elapsed after making the assignment, before filing the petition in bankruptcy; but, if their contention is correct and an assignment is absolutely void, four *years* would make no difference, because if it were void, mere passage of time could not breathe life into it. Many times four months have passed in the instant case since the making of the assignment, and no bankruptcy has intervened. If a petition in bankruptcy were now filed in the instant case, the assignment would be a closed proceeding, because title has long since passed, and cannot be attacked. So this court held

in Mayer vs. Hellman. But appellants contend that title did not pass, which raises a conflict between this court and the appellants' theory of the case.

Appellants make much in their brief about affording the insolvent debtor a choice of remedies. If the debtor sought discharge, there is no choice—the only recourse is to the bankruptcy law. The debtor here may take his choice of distributing his property as far as it will go and leaving the unpaid balance as a future liability, under an assignment, or he may go into the bankruptcy court, and procure a discharge. But there is nothing in the law or the decisions which would *compel* a man to take bankruptcy, except by action of the creditors, or which make it his duty to file a voluntary petition. Appellants contend, at page 48 of their brief, that one who has the privilege of becoming a bankrupt under the Bankruptcy Act, cannot ignore the privileges of that law. However, the Circuit Court of Appeals for the Eighth Circuit disposed of this contention in 1903 in Summers vs. Abbott, 122 Fed. 36, in which it was specifically held that there was no obligation or duty upon an insolvent to voluntarily go into bankruptcy, but that he had a perfect legal right to make a deed of assignment to accomplish the "laudable purpose" of distributing his property ratably as far as it would go.

Appellants quote at some length from In Re Gutwillig,

90 Fed. 475, and 92 Fed. 357, but fail to quote the portion wherein Judge Brown says:

> "I do not think that a general assignment made in conformity with laws like those of the State of New York can be considered 'as a proceeding commenced under State Insolvency laws,' "

nor do they show that the point for decision was whether an assignment for the benefit of creditors was *voidable as against a trustee in bankruptcy* appointed under proceedings begun within four months. There has never been any doubt on the latter point, for thirty years.

It is unquestioned that an assignment for the benefit of creditors is an act of bankruptcy. So, too, is a state court receivership on the grounds of insolvency. So is a preferential transfer of property by an insolvent debtor. But none of the three acts above mentioned is innately wrong or illegal, and none of them is void *except* as against direct bankruptcy proceedings. Unless bankruptcy proceedings are begun within four months of the act, a preferential transfer cannot be set aside. Unless bankruptcy proceedings are begun within four months, an assignment for the benefit of creditors cannot be attacked. If the mere fact that an assignment for the benefit of creditors is made an act of bankruptcy would be sufficient, without the expression of any such specific intent, to make such an assignment void ab initio, the same reasoning would apply to the appoint-

ment of a state court receiver, which is a reductio ad absurdum, for hundreds of state court receivers are appointed every year, and no one has ever thought for an instant that such proceedings were void, being merely voidable by a trustee in bankruptcy within four months.

Appellants further contend that this court, by its dicta in the Pinkus case upon a radically different fact situation, has overruled the reasoning of the Supreme Court of Texas, as expressed in Keating vs. Vaughn, 61 Texas 518:

> "The statute in question is in no sense an insolvent law providing for the discharge of a debtor by a compliance with its terms without the consent of the creditor, but is a statute which, for the better protection of creditors, prescribes a mode for the administration of the estates of insolvents under assignments made by the debtors themselves which would be good at common law unaided by the statute, and, like any other trust, could be enforced in a court of equity in the absence of a statute providing a mode of administration.
>
> "Proceedings under such statutes have been sustained and held not to be even suspended by a general bankrupt law enacted by Congress."

Not only has this court not ever specifically overruled the above holding of Keating vs. Vaughn, but this court has often laid it down as a rule for its action that it

would not do so. In Union National Bank of Chicago vs. Bank of Kansas City, 136 U. S. 223, 34 L. Ed. 341, this court said:

> "The question of the construction and effect of a statute of a state, regulating assignments for the benefit of creditors, is a question upon which the decisions of the highest courts of the state, establishing a rule of property, are of controlling authority in the courts of the United States. Brashear vs. West, 7 Peters 608, 8 L. Ed. 801; Allen vs. Massey, 84 U. S. 351, 21 L. Ed. 542; Lloyd vs. Fulton, 91 U. S. 479, 23 L. Ed. 363; Summer vs. Hicks, 67 U. S. 532, 17 L. Ed. 355; Jaffray vs. McGehee, 107 U. S. 361, 27 L. Ed. 495; Peters vs. Bain, 133 U. S. 670, 33 L. Ed. 696; Jencks vs. Quidnick Co., 135 U. S. 457, 34 L. Ed. 200."

This rule was recognized by this court in the Pinkus case, as hereinbefore cited, where this court said:

> "The Arkansas Statute is an insolvent law. It is so designated in its title, Arkansas Acts of 1897, and in the revision. The Supreme Court of the State treats it as such."

This rule has been applied by the lower federal courts in Re Curtis, 91 Fed. 737, applying the Illinois law; In Re Bridge, 230 Fed. 184, applying the Washington law; Galbraith vs. Kline, 7 Fed. (2nd) 682, applying the Montana law. In the last case, the court, after citing Union National Bank vs. Bank of Kansas City, supra, said,

> "The validity of an assignment for the benefit of creditors is to be determined by the statute law in force at that time in the state in which it is made, or in its absence by the common law."

The language above quoted from Keating vs. Vaughn has often been cited with approval and followed by the Supreme Court of Texas, and the Courts of Civil Appeals, showing that the history of the Texas law is not one of an insolvent law, as claimed by appellants, but rather of a law regulating administration of assignments for the benefit of creditors. The Texas Supreme Court held in 1900, in Patty-Joiner & Eubank Company vs. Cummins, 59 S. W. 297, after quoting the foregoing language from Keating vs. Vaughn, and in passing upon the specific question involved in the instant case, that:

> "We conclude that the law of this State, concerning assignments for creditors, is not an insolvency law."

The language in Keating vs. Vaughn is again approved by the Supreme Court of Texas in Hajek & Simicek vs. Luck, 74 S. W. 305. And just here it may be pointed out that appellants cite the Hajek case as an instance of conflict in the Texas law, not pausing to call this honorable court's attention to the fact that the *assignment itself*, in that case, provided for a release by accepting creditors, and the complainants therein gave a release as a condition of receiving their portion of the proceeds,

quite unlike the assignment in the instant case, or in the Patty-Joiner case.

The most recent approbation of the foregoing language is found in the opinion of the Court of Civil Appeals in the instant case, approved and affirmed by the Supreme Court.

Accordingly, under the rule of the Union National Bank case, supra, the Texas law of assignments for the benefit of creditors should be held to be just that, and not in any sense an insolvency law.

Such being the case, the instant matter falls under the rule of Mayer vs. Hellman and Stellwagen vs. Clum, and completely outside the rule of International Shoe Company vs. Pinkus. The distinction between the two lines of decision was ably pointed out by Judge Adams, district judge, In Re Sievers, 91 Fed. 366:

> "Concerning these different contentions, it appears to me that there is a substantial difference between a proceeding under a general insolvency statute and one under a statute permitting general assignments. The one administers upon the estate of an insolvent as a proceeding in the court, derives its potency from the law, winds up the estate judicially, and discharges the debtor. Such is essentially a proceeding in bankruptcy, and such is undoubtedly superseded by the Act of Congress in question . . . The other derives its potency not from the law, but

> from the contract or deed of the debtor, is administered under and according to the provisions of the deed, supplemented only by salutary legislative safeguards, and does not result in a discharge of the debtor from his obligations. This method of proceeding is not superseded by the Act of Congress in question. Mayer vs. Hellman, 91 U. S. 496; Boese vs. King, 108 U. S. 379; Reed vs. McIntyre, 98 U. S. 507."

The Sievers case has often been cited with approval by this court, and the distinction as set out therein has been carefully observed thruout every jurisdiction in the country. Mr. Justice Butler obviously had this distinction in mind in International Shoe Company vs. Pinkus when he opened his opinion in that case by first pointing out that the statute under discussion was an insolvency law, and continued by saying:

> "In the opinion of the State Supreme Court it is said that the effect of the proceeding in the chancery court was the same as if the insolvent had made an assignment for the benefit of his creditors. But the property was not handed over simply for the purpose of payment of debts as far as it would go; it was transferred pursuant to a statute and decree imposed intending to secure the debtor's discharge,"

expressly refusing to give the Arkansas Insolvency Law the effect of an assignment for the benefit of creditors.

The opinion closes with the statement that, as all the proceedings were under the Arkansas Insolvency Law, there is no need to decide whether an assignment, on the conditions specified in the decree, independently of statute, would protect the property from seizure by the creditor.

Only a very loose perusal of the opinion in the Pinkus case could lead one to believe that it was ever intended to apply to such a state of facts as here exist. In the instant case the appellants are in the anomalous position of seeking to avail themselves of the Bankruptcy Law in order to defeat one of its primary purposes. If the appellants prevail, and utilize the Bankruptcy Law to overthrow the assignment herein, then appellants will collect the amount of their debt in full, while other creditors will receive about four per centum or less of theirs, and this in the face of the avowed purpose of the Bankruptcy Act to secure an equal and non-preferential distribution of the debtor's assets to all of his creditors!

However, appellants' view of the purposes of the Bankruptcy Act does not agree with that of this court, for in their conclusion (Appellants' Brief, pp. 41-2), the statement is made that the element of discharge is of minor consequence, and that distribution of the estate was originally the only purpose. This conflicts directly with the decision of this court, expressed in Burlingham

vs. Crouse, 228 U. S. 459, 57 L. Ed. 920; Williams vs. U. S. Fidelity Company, 236 U. S. 549, 59 L. Ed. 713; Kreitlein vs. Ferger, 238 U. S. 21, 59 L. Ed. 713; and Central Trust Company vs. Chicago Auditorium Association, 240 U. S. 581; in all of which this court held the discharge to be part of the two-fold purpose of the Bankruptcy Act.

(2) Regardless of the validity of Title 12 of the 1925 Revised Civil Statutes of Texas, the assignment in the instant case is valid and sufficient to pass title from the assignor to the assignee, and is not void.

It has been the contention of appellee thruout, and still is, that even if the Texas law regulating assignments for the benefit of creditors should be held suspended, yet nevertheless the power to make assignments was not created by the statute, but existed as a common law right long prior to enactment of the statute, which only regulated the administration of the estate after the assignment had been made, and that accordingly the assignment herein is valid, regardless of the validity of the statute.

This view, announced by the Texas Supreme Court in Keating vs. Vaughn, 61 Texas 518:

> "This is a statute which, for the better protection of creditors, prescribes a mode for the administration of the estates of insolvents under assign-

> ments made by the debtors themselves which would be good at common law unaided by statute and, like any other trust, could be enforced in a court of equity in the absence of a statute providing a mode of administration:"

and further elaborated by the same court two years later in 1886 in Weider vs. Maddox, 1 S. W. 168:

> "The right to make such assignments, if made bona fide, is not derived from statutes, but existed at common law, and now, in most of the States of this Union, laws have been enacted to regulate, control, and secure the faithful execution of the trust by the named assignee. The assignee acquires title and authority thru the assignor, whose act is in the nature of a contract, and the acceptance of it by the assignee imposes upon him a relationship of trust and confidence as to creditors and the assignor . . . That the assignment was made in the State of Missouri is a matter of no importance, as its validity does not depend upon any local law of that State, but is based on the common law right of an insolvent debtor to make an assignment of all his property subject to the payment of his debts for the benefit of his creditors;"

is the overwhelming weight of authority in America, as stated in 2 Ruling Case Law 644:

> "The right of a debtor to make an assignment for the benefit of creditors exists at common law as a corollary to the legal axiom that the power to dis-

> pose of property as one may see fit, where unrestricted by statute, is a necessary incident to the ownership of property;"

and was first enunciated by this court by Mr. Chief Justice Marshall in Brashear vs. West, supra, in the language before quoted:

> "The right to make it (an assignment for the benefit of creditors) results from that absolute ownership which every man claims over that which is his own."

and has been sustained by this court also in the cases of Boese vs. King, 108 U. S. 379, 27 L. Ed. 760, and Mayer vs. Hellman, supra, as well as in numerous cases in the federal courts and the State courts. In Re Farrell, 176 Fed. 505; In Re Sievers, 91 Fed. 366; In Re Bridge, 230 Fed. 184; In Re Tarnowski, 191 Wis. 279, 210 N. W. 836; Sabin vs. Chrisman, 154 Pac. 908; Cook vs. Rogers, 31 Mich. 391; Galbraith vs. Kline, 7 Fed. (2nd) 682.

Such being the case, and the assignment being sufficient to pass title regardless of the validity of the statutes, this court has held on numerous occasions that the assignment is valid until directly attacked in bankruptcy proceedings timely begun. This court said just that in Boese vs. King, 108 U. S. 379, 27 L. Ed. 760:

> "We are of the opinion that, except as against proceedings instituted under the Bankrupt Act for

> the purpose of securing the administration of the property in the bankruptcy court, the assignment, having been made without intent to hinder, delay or defraud creditors, was valid, for at least the purpose of securing an equal distribution of the estate among all the creditors of Locke in proportion to their several demands."

This same view was taken by this court in Mayer vs. Hellman, supra, and Reed vs. McIntyre, 98 U. S. 507, 25 L. Ed. 171, and also in Randolph vs. Scruggs, 190 U. S. 533, 47 L. Ed. 1165, wherein Mr. Justice Holmes said:

> "The assignment was not illegal. It was permitted by the law of the State and cannot be taken to have been prohibited by the Bankruptcy Law absolutely in every event, whether proceedings were instituted or not. Re Sievers, 91 Fed. 366; Re Romanow, 92 Fed. 510. It had no general fraudulent intent. *It was voidable only in case bankruptcy proceedings should be begun.* At the time when it was made the institution of such proceedings was uncertain."

In 1917 the Circuit Court of Appeals for the Ninth Circuit, speaking in Re Creech Bros. Lumber Co., 240 Fed. 8, after citing Mayer vs. Hellman and Randolph vs. Scruggs as controlling, concluded:

> "It follows that an assignment for the benefit of creditors by an individual or by a corporation, without a fraudulent intent, is valid even where the as-

signment is set aside by bankruptcy proceedings commenced within the statutory period of four months from the date of the assignment; and where the assignment has been made more than four months before the commencement of bankruptcy proceedings the assignment is a closed proceeding."

This same rule has been followed by the federal courts in Summers vs. Abbott, 122 Fed. 36; In Re Chase, 124 Fed. 753; In Re Fish Bros. Wagon Co., 164 Fed. 553; In Re Shinn, 185 Fed. 990; Bell vs. Blessing 225 Fed. 750; Galbraith vs. Kline, 7 Fed. (2nd) 682; and numerous other cases.

As no bankruptcy proceedings have ever been instituted in the instant case, it is clear from the foregoing decisions that the assignment herein should be upheld as valid, regardless of the validity of the statutes of Texas regulating assignments.

The question of whether or not funds in the hands of an assignee for the benefit of creditors are protected from extraordinary process by any disgruntled creditor is purely a local question, not involving a federal statute at all. Once the validity or invalidity of the assignment itself is determined by this court, the Texas law on the effect of the assignment in removing funds from seizure by a disgruntled creditor would apply. It is conceded that if this court should hold that the assignment herein is not sufficient to pass title under its terms

to the appellee, then appellants would be entitled to recover, but it is equally clear that if the sufficiency of the assignment herein to pass title is upheld by this court, in line with its prior decisions, then it is beyond question that the Texas courts hold unanimously that appellants cannot seize funds held by an assignee upon a claim against the assignor. Piggott vs. Schram & Co., 64 Texas 447; Schoolherr vs. Hutchins, 1 S. W. 266; McKee vs. Coffin, 1 S. W. 276; Fant vs. Elsbury, 2 S. W. 866. These cases were reviewed by the Texas courts in the instant case, and, not involving a federal question in any way, control the case, once this court has passed on the federal question of conflict between the assignment, and the Texas laws, with the United States Constitution and the Bankruptcy Act.

CONCLUSION

In conclusion, then, it has been shown that no question of discharge is properly in this case; that the property conveyed under the assignment herein was for the equal benefit of all creditors, whether accepting or not, and no release was sought; that appellants seek to recover the full amount of their claim to the detriment of all other creditors, contrary to the very moving spirit and guiding principle of the bankruptcy act; that the Texas law assailed by appellants is a regulatory measure concerning administration under assignments for the benefit of creditors, similar to laws of other states often

upheld in this court; that the Texas law is in no sense an insolvency law, by decision of the highest courts in Texas, which this court has heretofore announced to be binding upon it; that irrespective of statute, the assignment herein is sufficient, as at common law, to pass title to the appellee assignee; that such assignment has been often held to be valid except as against direct proceedings in bankruptcy seasonably taken, which are completely lacking here; and that pursuant to the Texas rule in such cases, the funds in the hands of the assignee are immune from the claim of appellants.

Accordingly, the appellee herein respectfully submits that the Texas Supreme Court and the Court of Civil Appeals committed no error herein, being guided solely by the prior pronouncements of this honorable court, and appellee therefore respectfully prays this court to affirm the judgment of the Supreme Court of the State of Texas.

Respectfully submitted,

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